

THE LABOUR RELATIONS ACT
THE MANITOBA LABOUR BOARD

BETWEEN:

UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

Applicant/Union

- and -

UNIVERSITY OF MANITOBA

Respondent/Employer

APPLICATION FOR REMEDY FOR UNFAIR LABOUR PRACTICE

The Applicant hereby alleges that:

1. Since on or about October 6, 2016, and continuing to the date of this Application, the Respondent has failed to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the collective agreement or a new collective agreement, contrary to section 63(1) of the Act, and has thereby committed an unfair labour practice contrary to section 26 of the Act.

PARTICULARS

2. The University of Manitoba Faculty Association (the "Union") is the certified Bargaining agent for a unit of approximately 1200 employees of the University of Manitoba ("the University"), pursuant to Manitoba

Labour Board Certificate No. 6968. In particular, the Union is certified as bargaining agent for all full-time academics holding the rank of Instructors, Lecturers, Professors, and Academic Librarians, employed by the University, subject to a list of enumerated exclusions.

3. The University is a body corporate, established by *The University of Manitoba Act* (the “Act”) and is governed, pursuant to the provisions of that Act, by its Board of Governors. The President of the University is Dr. David Barnard.
4. The Union and the University are parties to a Collective Agreement effective April 1, 2013 to March 31, 2016 (the “Collective Agreement”).
5. The Union and the University have been engaged in collective bargaining since April 2016. The respective bargaining committees of both parties have met to bargain on more than 20 occasions since April. The University’s collective bargaining team is led by Mr. Greg Juliano, Associate Vice-President (Human Resources), and the Union’s collective bargaining team is led by Dr. Robert Chernomas.
6. On May 25, 2016 the Union provided the University with its full package of bargaining proposals. Within its proposal, the Union proposed a one-year collective agreement, covering the period from April 1, 2016 to March 31, 2017, and a one year salary increase of 2%, plus market adjustments which resulted in an average salary increase of 13.2%.
7. The Union did not receive a full package of proposals from the University until September 13, 2016, when the University tabled a document entitled Comprehensive Settlement Proposal. In it, the University proposed a four year collective agreement, with annual general wage increases of 1%/2%/2%/2%, plus market adjustments (resulting in an average increase of 3.5% when combined with the proposed wage increase in the first

year), which, the University stated, would result in the average union member's salary being increased by 17.5% over four years. Dr. Barnard has since publicly characterized this wage offer as what the University believed to be a "fair and reasonable offer".

8. On October 3, 2016, the parties met to continue bargaining, and at that meeting the Union advised that it was reducing its demands regarding market adjustments by 70%, resulting in an average increase, over one year, of 6.9% (2% salary increase and 4.9% market adjustments). The University maintained its position on wages as set out above in paragraph 7.
9. On October 13, 2016, the Union announced to the University, and publicly, that its members had voted 86% in favour of strike action.
10. On October 19, 2016, the Union announced that if agreement was not reached with the University regarding a new Collective Agreement, a legal strike would commence at 7:00 AM on Tuesday, November 1, 2016.
11. The Parties met to bargain on October 21, 2016. At that meeting, Mr. Juliano, on behalf of the University, advised that the University's salary offer was no longer on the table. Dr. Chernomas asked Mr. Juliano to be clear that the University had formally withdrawn the salary proposal. Mr. Juliano replied that the union had rejected the University's proposal, and that there was now no salary offer on the table from the University. According to notes taken by members of the Union's bargaining team, Mr. Juliano communicated the following:

There is no financial offer on the table that either side finds acceptable so there is nothing right now. There might be something in the future. We do not intend to make a counter offer at this time. We need to make more progress on language issues before we can make a salary offer.

12. At some point, the University posted, on the University website, its Comprehensive Settlement Proposal, as well as the collective agreement text it was proposing for all articles including salaries. On a date which is unknown to the Union, but which the Union assumes is on or after October 3, 2016 (when the Union reduced its monetary demands at bargaining) the University amended its salary proposal document on the website, by inserting a text box, on the first page of its salary proposal, which read:

REJECTED THROUGH UMFA
COUNTER OFFER ON
OCTOBER 3, 2016.

13. The Union proposed three days of mediation in an effort to avoid a strike and the University agreed. Mediation was scheduled for October 27, 29, and 30. The agreed mediator was Mr. Larry Steinberg from Toronto.
14. On October 27 Mr. Juliano conveyed to Mr. Steinberg and Mr. Chernomas the following information:
- on or about October 6 he had been contacted by Mr. Gerry Irving, Secretary, Public Sector Compensation Committee, province of Manitoba;
 - Mr. Irving, in that communication and in subsequent communications, had directed the University to withdraw its proposal for a four year collective agreement and completely withdraw its salary proposal, substituting it with a salary proposal of 0% over a one-year collective agreement;

- the University was not to agree to mediation;
 - the Government would not fund binding arbitration if the University were to agree to that;
 - the University had made several attempts to convince Mr. Irving to reconsider the position that he had communicated, including telephone messages left by University President Dr. Barnard with the Premier, which had gone unanswered, and a letter President Barnard sent to the Premier on October 26, 2016;
 - Mr. Irving had confirmed his direction to the University via email to Mr. Juliano, which email he allowed UMFA Executive Director Dr. Greg Flemming and Union President Dr. Mark Hudson to read, but not retain;
 - As a result, the University was not prepared to offer anything beyond a one-year collective agreement, with no salary increases.
15. Mr. Juliano did not explain why the University had not notified the Union of this information prior to October 27.
16. The Union bargaining team considered this new information and determined to proceed with the mediation in any event, in an effort to avoid a strike. The mediation was unsuccessful, and a strike commenced on November 1, 2016, which is ongoing.

17. The Union has subsequently requested that Mr. Juliano provide a copy of Mr. Irving's email and he has declined to provide same.
18. The Union states that the University made a voluntary decision to follow the direction communicated by Mr. Irving, inasmuch as the University, by virtue of its independence, both as to governance and as to finances, as set out in the *Act*, had the statutory power and ability to maintain its salary offer notwithstanding Mr. Irving's interference, on behalf of the Government of Manitoba.
19. The Union says that the failure of the mediation process, and the resulting strike were either caused or materially contributed to by the University withdrawing its salary offer which, as is alleged above, is an act of bargaining in bad faith contrary to the University's obligations under the *Labour Relations Act of Manitoba*.

REMEDY

20. UMFA respectfully asks the Board to:
 - (a) Declare that the University has committed an unfair labour practice;
 - (b) Order the University to immediately compensate each UMFA member who was employed by the University at the time the strike commenced for all lost wages and employment benefits they would have earned had the strike not occurred, for the entire period of the strike;

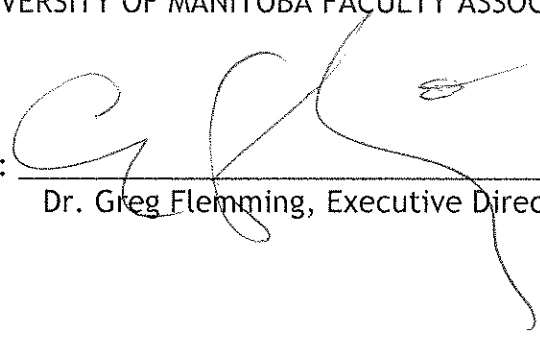
- (c) Order the University to compensate the Union for all costs associated with the strike;
- (d) Order the University to restore its monetary proposals as they existed on September 13, 2016, and to immediately commence collective bargaining with a view to entering into a collective agreement;
- (e) Order the University to pay UMFA \$2,000.00 in respect of interference with UMFA's rights under *The Labour Relations Act*;
- (f) Order the University to pay each member of UMFA \$2,000.00 in respect of interference with their rights under *The Labour Relations Act*;
- (g) Order the University to cease and desist any activity or operation which constitutes an unfair labour practice;
- (h) Order the University to rectify any situation resulting from the unfair labour practices, including that it apologize, in writing, to all UMFA members for committing the unfair labour practice herein;
- (i) Order the University to do, or refrain from doing, anything that is equitable to be done or refrained from in order to remedy any consequence of the unfair labour practices;
- (j) Order the University to do anything else just and equitable in the circumstances.

21. UMFA requests the opportunity to call evidence and submit argument and authorities at a hearing into these matters.

DATED at Winnipeg, Manitoba this 7TH day of November, 2016.

UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

Per:

A handwritten signature in black ink, appearing to read 'G. Flemming', written over a horizontal line. The signature is stylized and cursive.

Dr. Greg Flemming, Executive Director